

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ADRIAN MARCELO RAMIREZ, individually
and on behalf of all others similarly situated,

Plaintiff,

CIV. ACTION # 2:21-cv-12408-WJM-AME

vs.

CIVIL ACTION

SMART FOODS INC and DANIEL MUÑOZ, **ANSWER, AFFIRMATIVE DEFENSES,
& CERTIFICATION OF FILING**
Defendants.

Defendants, SMART FOODS INC. (“SFI”), with a business address of 72 Wabash Avenue, Clifton, New Jersey 07011; DANIEL MUÑOZ (“MUÑOZ”), with a business address of 72 Wabash Avenue, Clifton, New Jersey 07011 (collectively the “Defendants”), by way of Answer to Plaintiff’s Complaint, say:

I. Nature of Action, Jurisdiction, and Venue

1. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
2. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
3. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
4. Admitted.

II. Parties

5. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.

6. These Defendants deny and leave Plaintiff to his burden of proof at trial.
7. Defendant SFI admits.
8. Defendant SFI admits.
9. Defendant Muñoz admits.
10. Defendant Muñoz admits.
11. Defendant Muñoz denies.
12. Defendant Muñoz denies.
13. These Defendants deny.
14. These Defendants deny.
15. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
16. These Defendants admit.
17. These Defendants deny.

III. FLSA Collective Action Allegations

18. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
19. These Defendants neither admit nor deny and leave Plaintiff to his burden of proof at trial.
20. These Defendants deny.
21. These Defendants deny.
22. These Defendants deny.
23. These Defendants deny.

V. Factual Allegations

- 24. These Defendants deny.
- 25. These Defendants deny.
- 26. These Defendants deny.
- 27. These Defendants deny.
- 28. These Defendants deny.
- 29. These Defendants admit.
- 30. These Defendants deny.
- 31. These Defendants deny.
- 32. These Defendants deny.
- 33. These Defendants deny.
- 34. These Defendants deny.
- 35. These Defendants deny.
- 36. These Defendants deny.
- 37. These Defendants deny.
- 38. These Defendants deny.

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF,
INDIVIDUALLY, AND THE FLSA COLLECTIVE PLAINTIFFS**
(Overtime Violations under the Fair Labor Standards Act)

39. These Defendants re-assert, and incorporate herein by reference, all of their prior responses contained in Paragraphs 1 through 38 above.

- 40. These Defendants deny and leave Plaintiffs to their burden of proof at trial.
- 41. These Defendants deny and leave Plaintiffs to their burden of proof at trial.
- 42. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

43. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

44. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

45. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Overtime Violations under the NJWHL)

46. These Defendants re-assert, and incorporate herein by reference, all of their prior responses contained in Paragraphs 1 through 38 above.

47. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

48. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

49. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

50. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

51. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

52. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Minimum Wage Violations under the NJWHL)

53. These Defendants re-assert, and incorporate herein by reference, all of their prior responses contained in Paragraphs 1 through 38 above.

54. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

55. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

56. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

57. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

58. These Defendants deny and leave Plaintiffs to their burden of proof at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Failure to Timely Pay Wages in Violation of the NJWPL)

59. These Defendants re-assert, and incorporate herein by reference, all of their prior

responses contained in Paragraphs 1 through 38 above.

60. These Defendants deny and leave Plaintiff to his burden of proof at trial.

61. These Defendants deny and leave Plaintiff to his burden of proof at trial.

62. These Defendants deny and leave Plaintiff to his burden of proof at trial.

63. These Defendants deny and leave Plaintiff to his burden of proof at trial.

WHEREFORE, defendants, SMART FOODS INC. and DANIEL MUÑOZ (collectively the “Defendants”), demand that the Court enter judgment in their favor and against the Plaintiff, and those similarly situated Plaintiffs, as follows:

- a. Dismissing this count and all other counts of the Complaint;
- b. Award Defendants’ their costs and expenses, including attorneys’ fees; and
- c. Such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The damages complained of were not the result of any actions of these Defendants.

SECOND AFFIRMATIVE DEFENSE

Plaintiff, and those similarly situated Plaintiffs were adequately paid for work performed.

THIRD AFFIRMATIVE DEFENSE

Defendants invoke the defenses, protections and limitations of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. (“FLSA”).

FOURTH AFFIRMATIVE DEFENSE

Defendants invoke the defenses, protections and limitations of the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et seq. (“NJWHL”).

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages are barred by the doctrine of unjust enrichment.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and damages are barred by bad faith.

EIGHTH AFFIRMATIVE DEFENSE

Defendants did not know or show reckless disregard for whether their conduct was prohibited by the FLSA.

NINTH AFFIRMATIVE DEFENSE

The Doctrine of Avoidable Consequences limits Plaintiff's claims and damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants did not know or show reckless disregard for whether their conduct was prohibited by the NJWHL.

TWELVETH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state causes of action upon which relief may be granted.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff, and those similarly situated Plaintiffs, are barred by payment, setoff, and/or accord and satisfaction.

FIFTHTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff are barred by his independent contractor status.

SIXTEENETH AFFIRMATIVE DEFENSE

The claims of Plaintiff are frivolous and subject to Plaintiff(s) to attorney fee shifting in favor of the Defendants.

SEVENTEENETH AFFIRMATIVE DEFENSE

These Defendants reserve the right to amend this Answer to assert additional affirmative defenses on the completion of an ongoing investigation and discovery.

Dated: July 8, 2021

Respectfully submitted,

/s/ Arlindo B. Araujo
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Attorneys for Defendants

CERTIFICATION OF FILING

Arlindo B. Araujo, Esq. of full age, hereby certifies as follows:

1. I am an Attorney at Law of the State of New Jersey and an associate in the law firm of Garces, Grabler & LeBrocq, PC, attorneys for the Defendants, in the within matter.

2. On today's date, I filed the within Answer via ECF with the Clerk of the United States District Court for the District Court of New Jersey. A filed copy was mailed to Plaintiff's counsel of record.

3. I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Arlindo B. Araujo
ARLINDO B. ARAUJO, ESQ.

Dated: July 8, 2021